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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-0049.3/17 3rd draft

ATTY/TYPIST: ML:akl

BRIEF DESCRIPTION: Ensuring that water is available to support development.

1 AN ACT Relating to ensuring that water is available to support  
2 development; amending RCW 19.27.097, 36.70A.070, and 58.17.110;  
3 adding a new section to chapter 90.44 RCW; creating a new section;  
4 and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** By this act, the legislature is amending  
7 the law that was under review by the supreme court of Washington in  
8 *Whatcom County v. Western Washington Growth Management Hearings Board*  
9 (No. 91475-3, October 6, 2016), also known as the Hirst opinion. The  
10 legislature finds that the Hirst opinion imposes new requirements  
11 that create substantial hardships for property owners who rely on  
12 water drawn from wells to support reasonable uses of their property,  
13 and threaten to halt economic development throughout the state,  
14 especially in rural areas. The legislature further finds that the new  
15 requirements imposed by the supreme court in the Hirst opinion are  
16 unnecessary as a matter of public policy because groundwater  
17 withdrawals that are exempt from permitting by the department of  
18 ecology under RCW 90.44.050 cumulatively represent less than one  
19 percent of the total water used in Washington. Therefore, the  
20 legislature is amending pertinent statutes to ensure that prospective  
21 application of the law is not controlled by the Hirst opinion.

1       **Sec. 2.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to  
2 read as follows:

3       (1) Each applicant for a building permit of a building  
4 necessitating potable water shall provide evidence of an adequate  
5 water supply for the intended use of the building. Evidence may be in  
6 the form of a water right permit from the department of ecology, a  
7 letter from an approved water purveyor stating the ability to provide  
8 water, or another form sufficient to verify the existence of an  
9 adequate water supply, including but not limited to information  
10 pertaining to applicable water resources rules developed by the  
11 department of ecology. If an applicant for a building permit proposes  
12 to use a groundwater withdrawal that is exempt from permitting by the  
13 department of ecology under RCW 90.44.050 to supply potable water for  
14 a building, the local building permitting authority may determine  
15 that it is sufficient under this subsection for the applicant to  
16 provide evidence that water is physically available for use. In  
17 addition to other authorities, the county or city may impose  
18 conditions on building permits requiring connection to an existing  
19 public water system where the existing system is willing and able to  
20 provide safe and reliable potable water to the applicant with  
21 reasonable economy and efficiency. An application for a water right  
22 shall not be sufficient proof of an adequate water supply.

23       (2) Within counties not required or not choosing to plan pursuant  
24 to RCW 36.70A.040, the county and the state may mutually determine  
25 those areas in the county in which the requirements of subsection (1)  
26 of this section shall not apply. The departments of health and  
27 ecology shall coordinate on the implementation of this section.  
28 Should the county and the state fail to mutually determine those  
29 areas to be designated pursuant to this subsection, the county may  
30 petition the department of enterprise services to mediate or, if  
31 necessary, make the determination.

32       (3) Buildings that do not need potable water facilities are  
33 exempt from the provisions of this section. The department of  
34 ecology, after consultation with local governments, may adopt rules  
35 to implement this section, which may recognize differences between  
36 high-growth and low-growth counties.

37       **Sec. 3.** RCW 36.70A.070 and 2015 c 241 s 2 are each amended to  
38 read as follows:

1 The comprehensive plan of a county or city that is required or  
2 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
3 and descriptive text covering objectives, principles, and standards  
4 used to develop the comprehensive plan. The plan shall be an  
5 internally consistent document and all elements shall be consistent  
6 with the future land use map. A comprehensive plan shall be adopted  
7 and amended with public participation as provided in RCW 36.70A.140.  
8 Each comprehensive plan shall include a plan, scheme, or design for  
9 each of the following:

10 (1) A land use element designating the proposed general  
11 distribution and general location and extent of the uses of land,  
12 where appropriate, for agriculture, timber production, housing,  
13 commerce, industry, recreation, open spaces, general aviation  
14 airports, public utilities, public facilities, and other land uses.  
15 The land use element shall include population densities, building  
16 intensities, and estimates of future population growth. The land use  
17 element shall provide for protection of the quality and quantity of  
18 groundwater used for public water supplies. In providing for the  
19 protection of the quantity of groundwater used for public water  
20 supplies under this subsection, a county or city may rely on or refer  
21 to applicable water resources rules developed by the department of  
22 ecology. Wherever possible, the land use element should consider  
23 utilizing urban planning approaches that promote physical activity.  
24 Where applicable, the land use element shall review drainage,  
25 flooding, and storm water run-off in the area and nearby  
26 jurisdictions and provide guidance for corrective actions to mitigate  
27 or cleanse those discharges that pollute waters of the state,  
28 including Puget Sound or waters entering Puget Sound.

29 (2) A housing element ensuring the vitality and character of  
30 established residential neighborhoods that: (a) Includes an inventory  
31 and analysis of existing and projected housing needs that identifies  
32 the number of housing units necessary to manage projected growth; (b)  
33 includes a statement of goals, policies, objectives, and mandatory  
34 provisions for the preservation, improvement, and development of  
35 housing, including single-family residences; (c) identifies  
36 sufficient land for housing, including, but not limited to,  
37 government-assisted housing, housing for low-income families,  
38 manufactured housing, multifamily housing, and group homes and foster  
39 care facilities; and (d) makes adequate provisions for existing and  
40 projected needs of all economic segments of the community.

1 (3) A capital facilities plan element consisting of: (a) An  
2 inventory of existing capital facilities owned by public entities,  
3 showing the locations and capacities of the capital facilities; (b) a  
4 forecast of the future needs for such capital facilities; (c) the  
5 proposed locations and capacities of expanded or new capital  
6 facilities; (d) at least a six-year plan that will finance such  
7 capital facilities within projected funding capacities and clearly  
8 identifies sources of public money for such purposes; and (e) a  
9 requirement to reassess the land use element if probable funding  
10 falls short of meeting existing needs and to ensure that the land use  
11 element, capital facilities plan element, and financing plan within  
12 the capital facilities plan element are coordinated and consistent.  
13 Park and recreation facilities shall be included in the capital  
14 facilities plan element.

15 (4) A utilities element consisting of the general location,  
16 proposed location, and capacity of all existing and proposed  
17 utilities, including, but not limited to, electrical lines,  
18 telecommunication lines, and natural gas lines.

19 (5) Rural element. Counties shall include a rural element  
20 including lands that are not designated for urban growth,  
21 agriculture, forest, or mineral resources. The following provisions  
22 shall apply to the rural element:

23 (a) Growth management act goals and local circumstances. Because  
24 circumstances vary from county to county, in establishing patterns of  
25 rural densities and uses, a county may consider local circumstances,  
26 but shall develop a written record explaining how the rural element  
27 harmonizes the planning goals in RCW 36.70A.020 and meets the  
28 requirements of this chapter.

29 (b) Rural development. The rural element shall permit rural  
30 development, forestry, and agriculture in rural areas. The rural  
31 element shall provide for a variety of rural densities, uses,  
32 essential public facilities, and rural governmental services needed  
33 to serve the permitted densities and uses. To achieve a variety of  
34 rural densities and uses, counties may provide for clustering,  
35 density transfer, design guidelines, conservation easements, and  
36 other innovative techniques that will accommodate appropriate rural  
37 densities and uses that are not characterized by urban growth and  
38 that are consistent with rural character.

1 (c) Measures governing rural development. The rural element shall  
2 include measures that apply to rural development and protect the  
3 rural character of the area, as established by the county, by:

4 (i) Containing or otherwise controlling rural development;

5 (ii) Assuring visual compatibility of rural development with the  
6 surrounding rural area;

7 (iii) Reducing the inappropriate conversion of undeveloped land  
8 into sprawling, low-density development in the rural area;

9 (iv) Protecting critical areas, as provided in RCW 36.70A.060,  
10 and surface water and groundwater resources, which may include  
11 measures that rely on or refer to applicable water resources rules  
12 developed by the department of ecology; and

13 (v) Protecting against conflicts with the use of agricultural,  
14 forest, and mineral resource lands designated under RCW 36.70A.170.

15 (d) Limited areas of more intensive rural development. Subject to  
16 the requirements of this subsection and except as otherwise  
17 specifically provided in this subsection (5)(d), the rural element  
18 may allow for limited areas of more intensive rural development,  
19 including necessary public facilities and public services to serve  
20 the limited area as follows:

21 (i) Rural development consisting of the infill, development, or  
22 redevelopment of existing commercial, industrial, residential, or  
23 mixed-use areas, whether characterized as shoreline development,  
24 villages, hamlets, rural activity centers, or crossroads  
25 developments.

26 (A) A commercial, industrial, residential, shoreline, or mixed-  
27 use area are subject to the requirements of (d)(iv) of this  
28 subsection, but are not subject to the requirements of (c)(ii) and  
29 (iii) of this subsection.

30 (B) Any development or redevelopment other than an industrial  
31 area or an industrial use within a mixed-use area or an industrial  
32 area under this subsection (5)(d)(i) must be principally designed to  
33 serve the existing and projected rural population.

34 (C) Any development or redevelopment in terms of building size,  
35 scale, use, or intensity shall be consistent with the character of  
36 the existing areas. Development and redevelopment may include changes  
37 in use from vacant land or a previously existing use so long as the  
38 new use conforms to the requirements of this subsection (5);

39 (ii) The intensification of development on lots containing, or  
40 new development of, small-scale recreational or tourist uses,

1 including commercial facilities to serve those recreational or  
2 tourist uses, that rely on a rural location and setting, but that do  
3 not include new residential development. A small-scale recreation or  
4 tourist use is not required to be principally designed to serve the  
5 existing and projected rural population. Public services and public  
6 facilities shall be limited to those necessary to serve the  
7 recreation or tourist use and shall be provided in a manner that does  
8 not permit low-density sprawl;

9 (iii) The intensification of development on lots containing  
10 isolated nonresidential uses or new development of isolated cottage  
11 industries and isolated small-scale businesses that are not  
12 principally designed to serve the existing and projected rural  
13 population and nonresidential uses, but do provide job opportunities  
14 for rural residents. Rural counties may allow the expansion of small-  
15 scale businesses as long as those small-scale businesses conform with  
16 the rural character of the area as defined by the local government  
17 according to RCW 36.70A.030(15). Rural counties may also allow new  
18 small-scale businesses to utilize a site previously occupied by an  
19 existing business as long as the new small-scale business conforms to  
20 the rural character of the area as defined by the local government  
21 according to RCW 36.70A.030(15). Public services and public  
22 facilities shall be limited to those necessary to serve the isolated  
23 nonresidential use and shall be provided in a manner that does not  
24 permit low-density sprawl;

25 (iv) A county shall adopt measures to minimize and contain the  
26 existing areas or uses of more intensive rural development, as  
27 appropriate, authorized under this subsection. Lands included in such  
28 existing areas or uses shall not extend beyond the logical outer  
29 boundary of the existing area or use, thereby allowing a new pattern  
30 of low-density sprawl. Existing areas are those that are clearly  
31 identifiable and contained and where there is a logical boundary  
32 delineated predominately by the built environment, but that may also  
33 include undeveloped lands if limited as provided in this subsection.  
34 The county shall establish the logical outer boundary of an area of  
35 more intensive rural development. In establishing the logical outer  
36 boundary, the county shall address (A) the need to preserve the  
37 character of existing natural neighborhoods and communities, (B)  
38 physical boundaries, such as bodies of water, streets and highways,  
39 and land forms and contours, (C) the prevention of abnormally  
40 irregular boundaries, and (D) the ability to provide public

1 facilities and public services in a manner that does not permit low-  
2 density sprawl;

3 (v) For purposes of (d) of this subsection, an existing area or  
4 existing use is one that was in existence:

5 (A) On July 1, 1990, in a county that was initially required to  
6 plan under all of the provisions of this chapter;

7 (B) On the date the county adopted a resolution under RCW  
8 36.70A.040(2), in a county that is planning under all of the  
9 provisions of this chapter under RCW 36.70A.040(2); or

10 (C) On the date the office of financial management certifies the  
11 county's population as provided in RCW 36.70A.040(5), in a county  
12 that is planning under all of the provisions of this chapter pursuant  
13 to RCW 36.70A.040(5).

14 (e) Exception. This subsection shall not be interpreted to permit  
15 in the rural area a major industrial development or a master planned  
16 resort unless otherwise specifically permitted under RCW 36.70A.360  
17 and 36.70A.365.

18 (6) A transportation element that implements, and is consistent  
19 with, the land use element.

20 (a) The transportation element shall include the following  
21 subelements:

22 (i) Land use assumptions used in estimating travel;

23 (ii) Estimated traffic impacts to state-owned transportation  
24 facilities resulting from land use assumptions to assist the  
25 department of transportation in monitoring the performance of state  
26 facilities, to plan improvements for the facilities, and to assess  
27 the impact of land-use decisions on state-owned transportation  
28 facilities;

29 (iii) Facilities and services needs, including:

30 (A) An inventory of air, water, and ground transportation  
31 facilities and services, including transit alignments and general  
32 aviation airport facilities, to define existing capital facilities  
33 and travel levels as a basis for future planning. This inventory must  
34 include state-owned transportation facilities within the city or  
35 county's jurisdictional boundaries;

36 (B) Level of service standards for all locally owned arterials  
37 and transit routes to serve as a gauge to judge performance of the  
38 system. These standards should be regionally coordinated;

39 (C) For state-owned transportation facilities, level of service  
40 standards for highways, as prescribed in chapters 47.06 and 47.80



1 RCW, to gauge the performance of the system. The purposes of  
2 reflecting level of service standards for state highways in the local  
3 comprehensive plan are to monitor the performance of the system, to  
4 evaluate improvement strategies, and to facilitate coordination  
5 between the county's or city's six-year street, road, or transit  
6 program and the office of financial management's ten-year investment  
7 program. The concurrency requirements of (b) of this subsection do  
8 not apply to transportation facilities and services of statewide  
9 significance except for counties consisting of islands whose only  
10 connection to the mainland are state highways or ferry routes. In  
11 these island counties, state highways and ferry route capacity must  
12 be a factor in meeting the concurrency requirements in (b) of this  
13 subsection;

14 (D) Specific actions and requirements for bringing into  
15 compliance locally owned transportation facilities or services that  
16 are below an established level of service standard;

17 (E) Forecasts of traffic for at least ten years based on the  
18 adopted land use plan to provide information on the location, timing,  
19 and capacity needs of future growth;

20 (F) Identification of state and local system needs to meet  
21 current and future demands. Identified needs on state-owned  
22 transportation facilities must be consistent with the statewide  
23 multimodal transportation plan required under chapter 47.06 RCW;

24 (iv) Finance, including:

25 (A) An analysis of funding capability to judge needs against  
26 probable funding resources;

27 (B) A multiyear financing plan based on the needs identified in  
28 the comprehensive plan, the appropriate parts of which shall serve as  
29 the basis for the six-year street, road, or transit program required  
30 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
31 35.58.2795 for public transportation systems. The multiyear financing  
32 plan should be coordinated with the ten-year investment program  
33 developed by the office of financial management as required by RCW  
34 47.05.030;

35 (C) If probable funding falls short of meeting identified needs,  
36 a discussion of how additional funding will be raised, or how land  
37 use assumptions will be reassessed to ensure that level of service  
38 standards will be met;

1 (v) Intergovernmental coordination efforts, including an  
2 assessment of the impacts of the transportation plan and land use  
3 assumptions on the transportation systems of adjacent jurisdictions;

4 (vi) Demand-management strategies;

5 (vii) Pedestrian and bicycle component to include collaborative  
6 efforts to identify and designate planned improvements for pedestrian  
7 and bicycle facilities and corridors that address and encourage  
8 enhanced community access and promote healthy lifestyles.

9 (b) After adoption of the comprehensive plan by jurisdictions  
10 required to plan or who choose to plan under RCW 36.70A.040, local  
11 jurisdictions must adopt and enforce ordinances which prohibit  
12 development approval if the development causes the level of service  
13 on a locally owned transportation facility to decline below the  
14 standards adopted in the transportation element of the comprehensive  
15 plan, unless transportation improvements or strategies to accommodate  
16 the impacts of development are made concurrent with the development.  
17 These strategies may include increased public transportation service,  
18 ride-sharing programs, demand management, and other transportation  
19 systems management strategies. For the purposes of this subsection  
20 (6), "concurrent with the development" means that improvements or  
21 strategies are in place at the time of development, or that a  
22 financial commitment is in place to complete the improvements or  
23 strategies within six years. If the collection of impact fees is  
24 delayed under RCW 82.02.050(3), the six-year period required by this  
25 subsection (6)(b) must begin after full payment of all impact fees is  
26 due to the county or city.

27 (c) The transportation element described in this subsection (6),  
28 the six-year plans required by RCW 35.77.010 for cities, RCW  
29 36.81.121 for counties, and RCW 35.58.2795 for public transportation  
30 systems, and the ten-year investment program required by RCW  
31 47.05.030 for the state, must be consistent.

32 (7) An economic development element establishing local goals,  
33 policies, objectives, and provisions for economic growth and vitality  
34 and a high quality of life. The element shall include: (a) A summary  
35 of the local economy such as population, employment, payroll,  
36 sectors, businesses, sales, and other information as appropriate; (b)  
37 a summary of the strengths and weaknesses of the local economy  
38 defined as the commercial and industrial sectors and supporting  
39 factors such as land use, transportation, utilities, education,  
40 workforce, housing, and natural/cultural resources; and (c) an

1 identification of policies, programs, and projects to foster economic  
2 growth and development and to address future needs. A city that has  
3 chosen to be a residential community is exempt from the economic  
4 development element requirement of this subsection.

5 (8) A park and recreation element that implements, and is  
6 consistent with, the capital facilities plan element as it relates to  
7 park and recreation facilities. The element shall include: (a)  
8 Estimates of park and recreation demand for at least a ten-year  
9 period; (b) an evaluation of facilities and service needs; and (c) an  
10 evaluation of intergovernmental coordination opportunities to provide  
11 regional approaches for meeting park and recreational demand.

12 (9) It is the intent that new or amended elements required after  
13 January 1, 2002, be adopted concurrent with the scheduled update  
14 provided in RCW 36.70A.130. Requirements to incorporate any such new  
15 or amended elements shall be null and void until funds sufficient to  
16 cover applicable local government costs are appropriated and  
17 distributed by the state at least two years before local government  
18 must update comprehensive plans as required in RCW 36.70A.130.

19 **Sec. 4.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read  
20 as follows:

21 (1) The city, town, or county legislative body shall inquire into  
22 the public use and interest proposed to be served by the  
23 establishment of the subdivision and dedication. It shall determine:  
24 (a) If appropriate provisions are made for, but not limited to, the  
25 public health, safety, and general welfare, for open spaces, drainage  
26 ways, streets or roads, alleys, other public ways, transit stops,  
27 potable water supplies, sanitary wastes, parks and recreation,  
28 playgrounds, schools and schoolgrounds, and shall consider all other  
29 relevant facts, including sidewalks and other planning features that  
30 assure safe walking conditions for students who only walk to and from  
31 school; and (b) whether the public interest will be served by the  
32 subdivision and dedication.

33 (2) A proposed subdivision and dedication shall not be approved  
34 unless the city, town, or county legislative body makes written  
35 findings that: (a) Appropriate provisions are made for the public  
36 health, safety, and general welfare and for such open spaces,  
37 drainage ways, streets or roads, alleys, other public ways, transit  
38 stops, potable water supplies, sanitary wastes, parks and recreation,  
39 playgrounds, schools and schoolgrounds and all other relevant facts,

1 including sidewalks and other planning features that assure safe  
2 walking conditions for students who only walk to and from school; and  
3 (b) the public use and interest will be served by the platting of  
4 such subdivision and dedication. If it finds that the proposed  
5 subdivision and dedication make such appropriate provisions and that  
6 the public use and interest will be served, then the legislative body  
7 shall approve the proposed subdivision and dedication. Dedication of  
8 land to any public body, provision of public improvements to serve  
9 the subdivision, and/or impact fees imposed under RCW 82.02.050  
10 through 82.02.090 may be required as a condition of subdivision  
11 approval. Dedications shall be clearly shown on the final plat. No  
12 dedication, provision of public improvements, or impact fees imposed  
13 under RCW 82.02.050 through 82.02.090 shall be allowed that  
14 constitutes an unconstitutional taking of private property. The  
15 legislative body shall not as a condition to the approval of any  
16 subdivision require a release from damages to be procured from other  
17 property owners.

18 (3) If the preliminary plat includes a dedication of a public  
19 park with an area of less than two acres and the donor has designated  
20 that the park be named in honor of a deceased individual of good  
21 character, the city, town, or county legislative body must adopt the  
22 designated name.

23 (4) In approving a subdivision or dedication under this section,  
24 a city, town, or county legislative body may rely on or refer to  
25 applicable water resources rules developed by the department of  
26 ecology to determine if appropriate provisions have been made for  
27 potable water supplies.

28 NEW SECTION. Sec. 5. A new section is added to chapter 90.44  
29 RCW to read as follows:

30 (1) A groundwater withdrawal that is exempt from the requirement  
31 to obtain a permit from the department under RCW 90.44.050 may not be  
32 deemed or considered to be causing impairment or injury to a base  
33 flow, minimum flow, minimum level, or other similar standard or  
34 policy, established by the department, regardless of the priority  
35 date of the base flow, minimum flow, minimum level, or other similar  
36 standard or policy.

37 (2) This section does not affect the ability of any person to  
38 pursue a cause of action for the protection of any water right that

1 is not a base flow, minimum flow, minimum level, or other similar  
2 standard or policy, established by the department.

3 NEW SECTION. **Sec. 6.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of  
9 the state government and its existing public institutions, and takes  
10 effect immediately.

--- END ---